In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 229

FEDERICO MARIN GUTIERREZ,
PETITIONER,

v.

WATERMAN STEAMSHIP CORP.,
RESPONDENT.

BRIEF FOR RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Miscellaneous

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Statement of the Case

Respondent adds to petitioner's statement that beans fell on the apron prior to petitioner's injuries when a bag fell from a pallet in midair and broke upon falling to the ground.

Petitioner took his orders solely from his employer, the independent stevedoring contractor; he had no contract whatsoever with any of the vessel's owners or agents. The area where petitioner was working was owned, managed, operated and under the possession and control of an entity not involved in the suit.

Argument

Point One

The District Court Lacked Jurisdiction

Inasmuch as the Trial Court in its Conclusion of Law No. 1 (R. 18) found that its jurisdiction is based on the Extension of Admiralty Jurisdiction Act; 46 U.S.C.A. 740, we address ourselves first to the fundamental question of whether the general maritime law can be applied to this case. If it cannot, that ends the controversy and the decision of the Circuit Court must be affirmed.

Marin's injuries were consummated on land. It has long been established that a pier is an extension of the land and beyond the admiralty and maritime jurisdiction. *Cleveland T. & V. R. Co.* v. *Cleveland Steamship Co.*, 208 U.S. 316, 52 L. ed. 508 (1908); *State Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263; 66 L. ed. 933 (1922). State law applies to an accidental injury occurring upon a pier. *Smith & Sons* v. *Taylor*, 276 U.S. 179, 72 L. ed. 520 (1928); *The Plymouth*, 3 Wall. 20; 70 L. ed. 125 (1886).

With respect to torts, it is the locality of the substance and consummation of the wrong which determines whether admiralty jurisdiction exists. Benedict on Admiralty, Vol. 1, Page 2. Since Petitioner's injuries were sustained on land, there is no admiralty jurisdiction and there is no basis for application of the general maritime law to his action against respondent unless his claim is covered by the Extension Act. This Act extended the jurisdiction of the United States to cases of injury to persons "caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land".

It is plain from the legislative history of the Admiralty Extension Act that this statute does not give petitioner a cause of action against respondent. (See Senate Report

No. 1593 in Vol. 2, United States Congressional Service (80th Congress, 2d Session, 1948), page 1898.) The report makes it clear that the extension of jurisdiction intended by Congress pertained solely to damage or injury to a person or a structure ashore caused *by a vessel* on navigable water, the Extension Act does not apply.

Petitioner was not injured by the vessel. It was not the vessel which failed to discover the spilled beans on the apron, or to take corrective action. The Court did not find, nor could it have found, that the broken bags were appliances or appurtenances of the vessel. The only connection between the bags and the vessel was that the vessel had previously transported them as a common carrier by water. Under these circumstances, there is no basis whatever for suggesting that an injury traceable, causally, to broken bags, was caused by the vessel itself within the meaning of the Extension Act. For the above reasons it must be concluded that the District Court lacked jurisdiction under the Extension Act.

Point Two

Petitioner Is Not Entitled to the Protection Afforded to Seamen Under the Doctrine of Seaworthiness.

The thrust of petitioner's argument to support his claim that he is entitled to recover under the doctrine of seaworthiness is that the cargo was unseaworthy because broken bags had been discharged from the vessel and spilled on the apron. We have not been able to find a case holding that a vessel is unseaworthy because the cargo was not safe to be handled by the longshoremen. There is no claim that the cargo was improperly stowed aboard the vessel. The only claim is that because beans were spilled on the dock the vessel was unseaworthy.

Seas Shipping Co. v. Sieracki, 328 U.S. 85, 90 L. ed. 1099 opened the doors to actions by longshoremen to recover for injuries suffered as a result of the unseaworthiness of a vessel. In that case, the vessel's liability was predicated on the theory that the injured longshoreman was performing a task *on board the vessel* which would historically have been performed by a crew member. The imposition of liability without fault on the ship owner was justified on the ground, among others, that the independent stevedoring contractor, who was Sieracki's employer, "ordinarily has neither right nor opportunity to discover or remove the cause of the peril and it is doubtful, therefore, that he owes to his employees, with respect to these hazards, the employer's ordinary duty to furnish a safe place to work, unless perhaps in cases where the perils are obvious or his own action creates them. If not, no such obligation exists unless it rests upon the owner of the ship".

The decision contains a footnote which reads as follows: "In this case we are not concerned with the question of whether the same policy extends to injuries incurred ashore by a stevedore engaged in the same work (328 U.S. 99, 90 L. Ed. 1109)."

Liability in *Sieracki* was justified under the theory that the Master has always control over the whole vessel and his crew even when they are on shore. In the case of a longshoreman working aboard the vessel, the Master has the right of control of everything that is going on board the vessel. If beans had been spilled inside the hold of the vessel the Master would have had the right or even the obligation of ordering that they be swept. Petitioner was working on an area over which the Master of the vessel had absolutely no right to instruct petitioner's employers as to how the work should be performed and as to what

steps should be taken to insure the safety of the men working on the dock.

Petitioner relies strongly on the several cases, commencing with *Strika* v. *Netherland Ministry of Traffic*, 185 F.2d. 555 (C.A. 2, 1950, cert. denied 341 U.S. 904), which extended the liability of a vessel to the case of longshoremen injured on the dock because of some conditions directly connected to the vessel.

There is a clear distinction between those cases and petitioner's claim. In *Strika*, the longshoreman was injured while on the dock, when a hatch cover fell on him because of the failure of the ship's tackle.

In *Pope & Talbot, Inc.* v. *Cordray*, 9 Cir. 1958, 258 F.2d 214, a longshoreman was injured aboard the vessel when a block, which was part of the ship's gear, dropped and struck him on the head.

In *American Export Lines, Inc.* v. *Revel*, 4 Cir. 1959, 266 F.2d 82, a defective ship's winch caused a pallet loaded with drums to strike the side of the vessel, the drums fell to the pier and one of them injured the plaintiff.

Hagans v. *Farrell Lines, Inc.*, 3 Cir. 1956, 237 F.2d holds that a longshoreman standing on the dock and struck by a draft of cocoa beans because of a defective ship's winch, is entitled to recover.

The above cases are clearly distinguishable from the one under discussion. In every one of them the injury was directly caused by some defect in the ship's gear. Petitioner was injured because of a condition created on land by his employer in an area over which the vessel owner had no control.

On the other hand, the Second Circuit has held that a longshoreman engaged in discharging cargo from a vessel and injured on the pier as a result of a defective skid furnished by his employer, the independent stevedoring contractor, and used for the discharging of cargo from the

ship to the dock, is not entitled to recover under the doctrine of seaworthiness. *Fredericks* v. *American Export Lines*, 227 F.2d. 450 (C.A. 2d, 1955). In denying recovery the Court states:

> "Finally, while in recent years the warranty of seaworthiness has been held by the Supreme Court to cover a pretty wide territory . . . , nevertheless, here the injury was incurred by a longshoreman standing on a pier, as a result of the failure of a defective appliance located on the pier and furnished by a subcontractor. *No decision so far has extended the sweeping protection of the seaworthiness doctrine to this situation.* No vessel was connected with the accident."

Had the longshoreman's employer taken the defective appliance aboard the vessel, there is no doubt that under the doctrine established in *Petterson* v. *Alaska SS Co., Inc.*, 9 Cir., 1953, 205 F.2d. 478, affirmed 347 U.S. 396, he would be entitled to recover because of the unseaworthiness of the vessel, created by the defective equipment.

It is apparent that the justification for imposing liability under *Sieracki*, *Strika*, and other cases cited by petitioner are not existing in this case. As pointed above, in *Sieracki* the Supreme Court stressed the inability of the stevedore to discover or remove the unseaworthy condition. The Master is always the ultimate authority aboard the vessel, but his authority does not extend to conditions existing on the pier under the exclusive control of another party. The condition of the beams on the dock were evident and known to the stevedoring contractor and to the petitioner but were unknown to the respondent. If any one had the right or opportunity to avoid the risk and to correct the condition it was petitioner's employer and not the respon-

dent. The respondent did not have the duty nor the opportunity to sweep the floor where petitioner was working.

Point Three

Respondent Was Not Negligent

Petitioner contends that respondent was under the duty of providing him with a safe place to work notwithstanding the fact that respondent had neither control of nor even right to control the pier where petitioner was injured; yet petitioner fails to cite a case in point.

Marceau v. *Great Lakes Transit Corp.*, 2 Cir. 1945, 146 F.2d 416, on which petitioner relies, holds that a seaman is entitled to the remedies of the Jones Act (46 U.S.C. 688) even if his injuries were suffered on shore, because at the time of the occurrence the seaman was in the ship's service and the dock where he was injured was under the possession and control of the ship owner.

In *Imperial Oil, Limited*, v. *Drlik*, 6 Cir. 1956, 234 F.2d 4, contrary to what is stated by petitioner, the plaintiff was not a longshoreman. He was an employee of an entity performing repairs to the vessel and was assisting the ship in unlocking at the time of the injury. The mooring cables were running from the ship's winches and tied to spiles on shore. The tightening of the cables was done by means of the winch operated by a member of the vessel's crew who, without warning, set the winch in motion, causing one of the mooring cables to become taut and injuring the plaintiff who was handling the mooring lines on shore. The court found that the ship owner had been negligent in not having some one coordinating the work of the crew member on board the vessel with that of the plaintiff on shore.

Beard v. *Ellerman Lines, Ltd.*, 3 Cir. 1961, 289 F.2d 201, can also be clearly distinguished. There was evidence that

the cargo was being discharged by dangerous methods, that the first officer of the vessel had observed the manner of discharging and that the vessel had failed to furnish plaintiff with a safe place to work. The longshoreman was injured aboard the vessel, and the jury found that the vessel had been negligent.

We must conclude that there was not a scintilla of evidence before the Trial Court to support a finding of negligence. There was no evidence that any officer or agent of the vessel was anywhere near the place where support any notice to respondent of the hazardous condition on the pier was created by petitioner's employer who had complete control of the area where petitioner was working.

Point IV

Petitioner Did Not Overcome the Inference That His Delay in Filing Suit Was Both Inexcusable and Prejudicial to Respondent.

The rule is well settled that laches will bar a suit in admiralty. Two elements must be present, 1) inexcusable delay in instituting suit, and, 2) prejudice resulting to the respondent from such delay. *Kane* v. *Union of Soviet Socialist Republics*, 189 F.2d 303 (C.A. 3d, 1951, cert. denied 342 U.S. 903).

In applying the doctrine of laches the Federal Courts have resorted to the analogous statute of limitations and the same practice prevails in Puerto Rico. *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 239 (C.A. 1st, 1956).

Petitioner's injury was covered by the Puerto Rico Workmen's Compensation Act and thus the analogous statute of limitations applicable to this case is 11 L.P.R.A. 32, which provides that a suit must be instituted within one year following the date of the final decision by the Manager of the State Insurance Fund.

When laches appears from the face of the libel and it is also asserted as an affirmative defense by the respondent as in the case under discussion, then the claim is barred unless the libelant alleges and proves circumstances excusing the delay, and it is incumbent to the respondent to disprove it. *Redman* v. *United States*, 176 F.2d 713 (C.A. 2d 1949).

That laches appear from the face of the libel in this case is evident on the following undisputable facts:

(1) The accident occurred on October 21, 1956.

(2) The analogous statute of limitations would have expired on November 30, 1957.

(3) The libel was filed in the United States District Court for the Southern District of New York on January 9, 1959.

When respondent was served with the libel in New York shortly after the filing of the libel, it was then that for the first time it learned that petitioner had allegedly suffered injuries while working on the apron.

The fact that petitioner's witnesses were available three years and three months after the occurrence, that the payroll records of the stevedore indicated the potential eyewitnesses, that the accident report filed by the stevedore named the witnesses and formed part of the record of the State Insurance Fund, that respondent produced evidence indicating the cargo damaged prior to and at the time of the discharge, that medical records indicating treatment and the names of the treating physicians were available, and that the respondent took petitioner's deposition and submitted interrogatories, does not change the situation, nor, without more, do away with and defeat the defense of laches.

By the time petitioner filed his claim and respondent learned of the accident, all the evidence obtained by respondent had become stale; the memory of the witnesses was not the same. Examples: Petitioner's employer reported to the State Insurance Fund that the accident occurred at 10:00 A.M. (Res. Exhibit No. 2, R. 133); in a statement given one month after the accident to an investigator of the State Insurance Fund petitioner also states that the accident occurred at 10:00 A.M. (Resp. Exhibit No. 1, R. 131-132); in a deposition on August 21, 1959, petitioner expressed that the accident occurred between 11:00 and 11:30 A.M. (R. 31-32), but by the time the case was tried, petitioner claims the accident occurred at 3:00 or 3:00 P.M. (R. 24).

In the statement above referred to to an investigator of the State Insurance Fund, petitioner describes his accident: "Just as I was about to receive the draft apparently the winchman from inside drew back on the sling load and carried me making me fall to the pavement and upon falling I could not get up because I felt a severe pain in my waist and part of the inguinal region." (R. 132).

Yet at the trial petitioner does not mention that the sling carried him making him fall, but claims that he slipped and fell seated on the platform. (R. 24).

As pointed out by the Circuit Court's opinion while some witnesses testified to loose beans falling from the drafts they also testified as to rice and feed. Yet the evidence before the Court was that beans were discharged from 8:00 to 11:30; canned goods from 11:30 to 3:30 and general cargo (which includes rice and feed) from 3:30 to 4:00 in the afternoon. (Resp. Exhibit No. 9, R. 155), interpreted by testimony of Mario Ramirez (R. 105).

Although petitioner attempted to prove non-prejudice, he failed in any way to excuse the undue delay. According to his own testimony, by the middle of 1957, several months

before the statute of limitations expired, he consulted and referred the case to an attorney who left for the States. (R. 25-26). He did not bother to follow up on what his attorney was doing but he merely slumbered on his rights until the middle of 1958 when he consulted another attorney (R. 26) and still waited until January 1959 before filing his libel. The fact that petitioner consulted an attorney did not put respondent on notice. Had petitioner filed a suit promptly, he would not have placed the respondent in the inequitable situation caused by filing suit in January 1959.

From the above it it submitted that the Circuit Court's findings that petitioner failed to justify his delay in filing suit and that respondent was prejudiced by such delay are amply supported by the record.

Conclusion

The decision of the United States Court of Appeals for the First Circuit should be affirmed.

Respectfully submitted,

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